



Tulane Environmental Law Clinic

March 8, 2016

**Via Certified Mail**

**Re: 187-001**

John Tesvich  
AmeriPure Processing Company, Inc.  
30300 Hwy. 23 South  
Buras, LA 70041

**Re: AmeriPure Processing Company, Inc.  
803 Willow St., Franklin, LA 70538  
Notice of Intent to File Citizen Suit for Unauthorized Discharge of Pollutant Into  
Waters of the United States**

Dear Mr. Tesvich:

This letter on behalf of Mr. Darryl Bennett and Mrs. Penny Bennett gives notice of AmeriPure Processing Company, Inc.'s ("AmeriPure") unauthorized discharges of pollutants into waters of the United States that violate Clean Water Act § 301(a), 33 U.S.C. § 1311(a), and Clean Water Act § 307, 33 U.S.C. § 1317. Mr. and Mrs. Bennett hope that, on receiving this notice, AmeriPure will take action to resolve the intermittent and ongoing Clean Water Act violations described more fully below. We invite you to meet with us to reach an amicable resolution.

#### **Factual Background**

AmeriPure is an oyster processing plant located in Franklin, Louisiana. This notice concerns three categories of violation:

- AmeriPure is discharging oyster-processing waste liquids through an opening in the side of its building into a basin that flows into a storm drain and from there into Bayou Teche. *See Exhibits A and B*, which are photos of a basin at the plant filled with thick, black waste liquid.
- Additionally, AmeriPure is storing oyster shells and other materials associated with its oyster-processing functions in storage bins, trailers, and/or industrial trucks (*see Exhibit C*, which is a photo of AmeriPure's Storage), where oyster wastes flow onto the ground and, upon information and belief, discharge from there into the storm drains that flow into Bayou Teche. *See Exhibits D, E, F*, photos of the truck discharging to the ground.

- AmeriPure is also discharging oyster-processing waste into the City of Franklin's Publicly Owned Treatment Works ("POTW" or "sewerage system"), causing the POTW to violate *its* permit limits for BOD (biochemical oxygen demand), ammonia, and nitrogen.

AmeriPure's violations began by at least March 7, 2011, and are ongoing.

AmeriPure does not have a permit to discharge oyster-processing waste from its facility. On January 17, 2013, AmeriPure applied for a Louisiana Pollutant Discharge Elimination System ("LPDES") permit to discharge oyster-processing waste from its Franklin facility. *See* LDEQ's EDMS document number 8865540. The application requested a permit for two discharge sites: 1) for the discharge of oyster-processing waste into storm drains, and 2) for the discharge of processing waste into Franklin's sewerage system. On June 25, 2013, AmeriPure withdrew its permit application. *See* LDEQ's EDMS document number 8902357. In its application withdrawal, AmeriPure stated that it "made changes to [its] washwater plumbing and cooler evaporation water plumbing that directs those out-flows into the municipal sewer drains."

Recent events show that AmeriPure's discharge causes the Franklin POTW to violate its Clean Water Act permit. This is because the Franklin POTW's violations stopped when AmeriPure stopped operations in late June 2010 due to the Deepwater Horizon oil spill. AmeriPure's operations resumed in November 2010. *See* Bruce Watson, *Oil Spill Economics Trickle Down as Red Lobster Chain Stops Serving Oysters*, DAILY FINANCE (June 23, 2010 1:52 PM);<sup>1</sup> *AmeriPure Oyster Processor Restarts Operations*, FIS.COM (Nov. 18, 2010, 1:50 PM).<sup>2</sup> After AmeriPure resumed operations, the Franklin POTW's violations also resumed and the City of Franklin repeatedly violated permit limits for BOD (biochemical oxygen demand), ammonia, and nitrogen.

Mr. and Mrs. Bennett regularly suffer from AmeriPure's operations. They live at 210 Wall Street, Franklin, Louisiana. Their home is across Wall Street from AmeriPure's plant. They regularly suffer from a strong rotting odor that emanates from AmeriPure's oyster-processing waste discharges. Further, the area surrounding AmeriPure regularly floods two to three times a year, carrying AmeriPure's wastes into the neighborhood, onto the Bennetts' lawn and property, and into the surrounding storm drains. *See* Exhibits G and H, which are photographs of 210 Wall Street during flooding.

### **AmeriPure's Clean Water Act Violations**

Under Clean Water Act § 301, 33 U.S.C. § 1311, it is unlawful for any person to discharge any pollutant from a point source into waters of the United States, except in compliance with a permit such as a permit under Clean Water Act § 402, 33 U.S.C. § 1342 and in compliance with Clean Water Act § 306 and 307, 33 U.S.C. §§ 1316-1317 (governing national standards of performance and pre-treatment

---

<sup>1</sup> [http://www.dailyfinance.com/2010/06/23/oil-spill-economics-trickle-down-as-red-lobster-chain-stos-serv/](http://www.dailyfinance.com/2010/06/23/oil-spill-economics-trickle-down-as-red-lobster-chain-stops-serv/)

<sup>2</sup> <http://www.fix.com/fis/worldnews/worldnews.asp?monthyear=&day=18&id=39283&I=e&special=&ndb=1%20target=>



and prohibiting pass-through violations). AmeriPure violates the Clean Water Act by discharging oyster-processing waste from its plant into the storm drain system in Franklin, Louisiana, which empties into Bayou Teche, without a permit. AmeriPure also violates pretreatment standards by failing to submit required reports regarding its discharges into the City of Franklin's POTW. Finally, AmeriPure's untreated discharges into the POTW are causing continuous pass-through violations through the City of Franklin's POTW.

**I. AmeriPure is violating Clean Water Act Section 301 from two distinct point sources.**

Clean Water Act § 301, 33 U.S.C. § 1311 prohibits any person from discharging any pollutant from a point source into waters of the United States, except in compliance with a permit, such as a permit under Clean Water Act § 402, 33 U.S.C. § 1342. First, AmeriPure is violating Clean Water Act § 301 because it is discharging oyster-processing waste (a pollutant), from an opening in its processing plant (a point source), through the stormwater drain and into Bayou Teche (waters of the United States), without a permit for this discharge.

Second, AmeriPure is violating Clean Water Act § 301 because it is storing oyster shells and other materials associated with its oyster-processing functions in storage bins, trailers, and/or industrial trucks (point sources) from which oyster liquid wastes (a pollutant) drip onto the ground and from there into storm drains that flow into Bayou Teche (a water of the United States) without a permit for such discharges.

**II. AmeriPure is violating the Pretreatment Regulations found at 40 C.F.R. Chapter I, Subchapter N by failing to submit required reports.**

AmeriPure discharges its untreated oyster waste liquids into the City of Franklin's POTW in violation of the Clean Water Act pretreatment regulations found at 40 C.F.R. Chapter I, Subchapter N,<sup>3</sup> and adopted by the State of Louisiana at LA. ADMIN CODE tit. 33, pt. IX, § 6111 and also by the City of Franklin at FRANKLIN, LA., CODE OF ORDINANCES ch. 82, art. III, §§ 58, 59 and 65 (2015). These regulations implement Clean Water Act §§ 306 and 307 (33 U.S.C. §§ 1316-17) (*see* 40 C.F.R. § 401.10), and apply to all plants that process Atlantic and Gulf oysters by either hand shucking or mechanical shucking. 40 C.F.R. §§ 408.260 & 408.270. All Gulf Coast oyster plants that process shucked oysters must comply with the standards in 40 C.F.R. §§ 408.260-67 (standards for hand-shucked oysters) and §§ 408.270-77 (standards for mechanically-shucked oysters). These standards require oyster plants discharging into POTWs to "comply with 40 C.F.R. part 403." 40 C.F.R. §§ 408.266 & 408.276. Part 403 requires that AmeriPure submit reports to its Control Authority, including a baseline report and regular compliance reports. 40 C.F.R. § 403.12. AmeriPure has not submitted any such reports to either the Louisiana Department of Environmental Quality or the City of Franklin, and is therefore violating the Clean Water Act.

<sup>3</sup> More particularly, the regulations that apply to AmeriPure in Subchapter N can be found at 40 C.F.R. §§ 401.10-17; §§ 403.1-20; and §§ 408.260-277

### **III. AmeriPure's discharges into the City of Franklin's POTW are causing pass-through violations.**

AmeriPure's untreated oyster-processing waste discharges into Franklin's POTW are causing pass-through violations of the City of Franklin POTW's LPDES permit, No. LA0006289. AmeriPure may not introduce into a POTW any pollutants which cause pass-through violations. LA. ADMIN CODE tit. 33, pt. IX, § 6109 (2015); FRANKLIN, LA., CODE OF ORDINANCES ch. 82, art. III, § 65 (2015). The term "pass-through" means "a discharge which exits the POTW into waters of the United States in quantities or concentrations which, alone or in conjunction with a discharge or discharges from other sources, is a cause of a violation of any requirement of the POTW's LPDES permit (including an increase in the magnitude or duration of a violation)." LA. ADMIN CODE tit. 33, pt. IX § 6105.

From at least October 2011 to the present, AmeriPure has introduced pollutants that pass through the POTW, causing the POTW to continuously violate its LPDES permit. Over the six-year period described in more detail below, the Franklin POTW has violated the terms and conditions of its permit, of which at least eighty-seven violations may be attributable to AmeriPure's untreated oyster-processing waste discharges.

The Clean Water Act provides that "any citizen may commence a civil action on his own behalf – (1) against . . . any person . . . who is alleged to be in violation of (A) an effluent standard or limitation under this chapter." Clean Water Act §505(a)(1)(A), 33 U.S.C. § 1365(a)(1)(A). If necessary, Mr. Darryl Bennett and Mrs. Penny Bennett intend to file a citizen suit to enforce the Clean Water Act. Mr. and Mrs. Bennett, however, would prefer to reach an amicable agreement with AmeriPure.

#### **City of Franklin POTW's Relevant Effluent Standard Violations**

The City of Franklin violates its permit no. LA0006289 as described below. Upon information and belief, AmeriPure's oyster-processing waste discharges into the Franklin sewerage system cause these violations. Mr. and Mrs. Bennett reserve the right to include in a future citizen enforcement suit violations that occur after January 2016.

<b>DMR Dates</b>	<b>Pollutant</b>	<b>Franklin POTW's Sample Measurement</b>	<b>Permit Maximum (Min.)</b>
1/1/16 – 1/31/16	Nitrogen, Ammonia	105 lb/d qty. mo. avg. 5.5 mg/L qlty. mo. avg. 7.9 mg/L qlty. wkly. avg.	40 lb/d qty. mo. avg. 2 mg/L qlty. mo. avg. 4 mg/L qlty. wkly. avg.
12/1/15-12/31/15	Nitrogen, Ammonia	134 lb/d qty. mo. avg. 8 mg/L qlty. mo. avg. 13.3 mg/L qlty. wkly. avg.	40 lb/d qty. mo. avg. 2 mg/L qlty. mo. avg. 4 mg/L qlty. wkly. avg.
	BOD, carbonaceous	160 lb/d qty. mo. avg. 8 mg/L qlty. mo. avg. 12 mg/L qlty. wkly. avg.	100 lb/d qty. mo. avg. 5 mg/L qlty. mo. avg. 8 mg/L qlty. wkly. avg.



11/1/15 – 11/30/15	Nitrogen, Ammonia	103 lb/d qty. mo. avg. 4.7 mg/L qlty. mo. avg. 5.5 mg/L qlty. wkly. avg.	40 lb/d qty. mo. avg. 2 mg/L qlty. mo. avg. 4 mg/L qlty. wkly. avg.
	BOD, carbonaceous	127 lb/d qty. mo. avg.	100 lb/d qty. mo. avg.
10/1/15 – 10/31/15	BOD, carbonaceous	107 lb/d qty. mo. avg. 9 mg/L qlty. mo. avg. 14 mg/L qlty. wkly. avg.	100 lb/d qty. mo. avg. 5 mg/L qlty. mo. avg. 8 mg/L qlty. wkly. avg.
9/1/15 – 9/30/15	Nitrogen, Ammonia	29 lb/d qty. mo. avg. 2.7 mg/L qlty. mo. avg. 4.9 mg/L qlty. wkly. avg.	40 lb/d qty. mo. avg. 2 mg/L qlty. mo. avg. 4 mg/L qlty. wkly. avg.
	BOD, carbonaceous	195 lb/d qty. mo. avg. 17 mg/L qlty. mo. avg. 30 mg/L qlty. wkly. avg.	100 lb/d qty. mo. avg. 5 mg/L qlty. mo. avg. 8 mg/L qlty. wkly. avg.
8/1/15 – 8/31/15	Oxygen, dissolved	4.89 mg/L qlty. mo. avg.	5 mg/L qlty. mo. avg. (min.)
	Nitrogen, Ammonia	3.3 mg/L qlty. mo. avg. 4.6 mg/L qlty. wkly. avg.	2 mg/L qlty. mo. avg. 4 mg/L qlty. wkly. avg.
7/1/15 – 7/31/15	BOD, carbonaceous	9 mg/L qlty. mo. avg. 14 mg/L qlty. wkly. avg.	5 mg/L qlty. mo. avg. 8 mg/L qlty. wkly. avg.
6/1/15 – 6/30/15	Nitrogen, Ammonia	56 lb/d qty. mo. avg. 7 mg/L qlty. mo. avg. 11.5 mg/L qlty. wkly. avg.	40 lb/d qty. mo. avg. 2 mg/L qlty. mo. avg. 4 mg/L qlty. wkly. avg.
	BOD, carbonaceous	10 mg/L qlty. mo. avg. 16 mg/L qlty. wkly. avg.	5 mg/L qlty. mo. avg. 8 mg/L qlty. wkly. avg.
5/1/15 – 5/31/15	Nitrogen, Ammonia	45 lb/d qty. mo. avg. 4.5 mg/L qlty. mo. avg. 9.3 mg/L qlty. wkly. avg.	40 lb/d qty. mo. avg. 2 mg/L qlty. mo. avg. 4 mg/L qlty. wkly. avg.
	BOD, carbonaceous	8 mg/L qlty. mo. avg. 11 mg/L qlty. wkly. avg.	5 mg/L qlty. mo. avg. 8 mg/L qlty. wkly. avg.
4/1/15 – 4/30/15	Nitrogen, Ammonia	59 lb/d qty. mo. avg. 5.2 mg/L qlty. mo. avg. 10 mg/L qlty. wkly. avg.	40 lb/d qty. mo. avg. 2 mg/L qlty. mo. avg. 4 mg/L qlty. wkly. avg.
	BOD, carbonaceous	6 mg/L qlty. mo. avg. 12 mg/L qlty. wkly. avg.	5 mg/L qlty. mo. avg. 8 mg/L qlty. wkly. avg.
3/1/15 – 3/31/15	Ammonia	129 lbs/d qty. mo. avg. 8.8 mg/L qlty. mo. avg. 11.1 mg/L qlty. wkly. avg.	40 lb/d qty. mo. avg. 2 mg/L qlty. mo. avg. 4 mg/L qlty. wkly. avg.
	BOD, carbonaceous	6 mg/L qlty. mo. avg.	5 mg/L qlty. mo. avg.

Notice of Violation  
March 8, 2015  
Page 6 of 8

12/1/14 – 12/31/14	Ammonia	82 lbs/d qty. mo. avg. 8.4 mg/L qlty. mo. avg. 12.4 mg/L qlty. wkly. avg.	40 lb/d qty. mo. avg. 2 mg/L qlty. mo. avg. 4 mg/L qlty. wkly. avg.
11/1/14 – 11/30/14	Nitrogen, Ammonia	64 lb/d qty. mo. avg. 7 mg/L qlty. mo. avg. 11.2 mg/L qlty. wkly. avg.	40 lb/d qty. mo. avg. 2 mg/L qlty. mo. avg. 4 mg/L qlty. wkly. avg.
	BOD, carbonaceous	9 mg/L qlty. wkly. avg.	8 mg/L qlty. wkly. avg.
10/1/14 – 10/31/14	Ammonia	66 lb/d qty. mo. avg. 5.9 mg/L qlty. mo. avg. 9.6 mg/L qlty. wkly. avg.	40 lb/d qty. mo. avg. 2 mg/L qlty. mo. avg. 4 mg/L qlty. wkly. avg.
	BOD, carbonaceous	6 mg/L qlty. mo. avg.	5 mg/L qlty. mo. avg.
7/1/14 – 7/31/14	BOD, carbonaceous	9.5 mg/L qlty. wkly. avg.	8 mg/L qlty. wkly. avg.
2/1/14 – 2/28/14	Nitrogen, Ammonia	42 lb/d qty. mo. avg. 3.88 mg/L qlty. mo. avg. 4.9 mg/L qlty. wkly. avg.	40 lb/d qty. mo. avg. 2 mg/L qlty. mo. avg. 4 mg/L qlty. wkly. avg.
3/1/13 – 3/31/13	Nitrogen, Ammonia	3 mg/L qlty. mo. avg. 6 mg/L qlty. wkly. avg.	2 mg/L qlty. mo. avg. 4 mg/L qlty. wkly. avg.
	BOD, carbonaceous	7 mg/L qlty. mo. avg. 9 mg/L qlty. wkly. avg.	5 mg/L qlty. mo. avg. 8 mg/L qlty. wkly. avg.
1/1/13 – 1/31/13	BOD, carbonaceous	7 mg/L qlty. mo. avg. 19 mg/L qlty. wkly. avg.	5 mg/L qlty. mo. avg. 8 mg/L qlty. wkly. avg.
12/1/11 – 12/31/11	Nitrogen, Ammonia	54 lb/d qty. mo. avg. 5.54 mg/L qlty. mo. avg. 11.35 mg/L qlty. wkly. avg.	40 lb/d qty. mo. avg. 2 mg/L qlty. mo. avg. 4 mg/L qlty. wkly. avg.
11/1/11 – 11/30/11	Nitrogen, Ammonia	2.51 mg/L qlty. mo. avg.	2 mg/L qlty. mo. avg.
10/1/11 – 10/31/11	Nitrogen, Ammonia	2.51 mg/L qlty. mo. avg. 4.75 mg/L qlty. wkly. avg.	2 mg/L qlty. mo. avg. 4 mg/L qlty. wkly. avg.
6/1/10 – 6/30/10	Nitrogen, Ammonia	42 lb/d qty. mo. avg. 3 mg/L qlty. mo. avg. 5 mg/L qlty. wkly. avg.	40 lb/d qty. mo. avg. 2 mg/L qlty. mo. avg. 4 mg/L qlty. wkly. avg.
	BOD, carbonaceous	5.10 mg/L qlty. mo. avg.	5 mg/L qlty. mo. avg.
5/1/10 – 5/31/10	Nitrogen, Ammonia	67 lb/d qty. mo. avg. 5.91 mg/L qlty. mo. avg. 6.85 mg/L qlty. wkly. avg.	40 lb/d qty. mo. avg. 2 mg/L qlty. mo. avg. 4 mg/L qlty. wkly. avg.

4/1/10 – 4/30/10	BOD, carbonaceous	106 lb/d qty. mo. avg. 10 mg/L qlty. mo. avg. 13.5 mg/L qlty. wkly. avg.	100 lb/d qty. mo. avg. 5 mg/L qlty. mo. avg. 8 mg/L qlty. wkly. avg.
	Nitrogen, Ammonia	54 lb/d qty. mo. avg. 5.67 mg/L qlty. mo. avg. 11.2 mg/L qlty. wkly. avg.	40 lb/d qty. mo. avg. 2 mg/L qlty. mo. avg. 4 mg/L qlty. wkly. avg.
	BOD, carbonaceous	6.43 mg/L qlty. mo. avg.	5 mg/L qlty. mo. avg.

### Relief Available

Mr. and Mrs. Bennett would prefer to resolve AmeriPure's violations without litigation. If Mr. and Mrs. Bennett file a citizen suit seeking compliance with the Clean Water Act, they will seek declaratory and injunctive relief and civil penalties. Under Clean Water Act § 309(d), 33 U.S.C. § 1319(d), and 40 C.F.R. § 19.4, a court may fine AmeriPure up to \$37,500.00 **per day for each violation** and order it to pay reasonable attorneys' fees and litigation costs.

### Conclusion

Mr. and Mrs. Bennett bring their concerns to your attention and hope that they can be resolved without litigation. The Clean Water Act provides for a sixty-day waiting period before allowing suit in federal court. This waiting period gives the parties a reasonable time to resolve the matter cooperatively. If you have questions or concerns about this notice, or if you are interested in exploring a cooperative solution, please call undersigned counsel.

The name, address, and phone number of the people giving notice is:

Darryl and Penny Bennett  
210 Wall St.  
Franklin, LA 70538  
(337) 346-0266

Please direct all correspondence to counsel:

Machelle Lee Hall  
Tulane Environmental Law Clinic  
6329 Freret St., Suite 130  
New Orleans, LA 70118  
Tel. (504) 865-5789  
Fax: (504) 862-8721

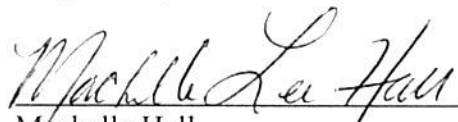


Notice of Violation  
March 8, 2015  
Page 8 of 8

Prepared by:

  
\_\_\_\_\_  
E. Carra Smith  
Student  
Tulane Environmental Law Clinic

Respectfully submitted by:

  
\_\_\_\_\_  
Machelle Hall  
Tulane Environmental Law Clinic  
6329 Freret Street, Suite 130  
New Orleans, Louisiana 70118  
*Counsel for Darryl and Penny Bennett*

cc: Gina McCarthy, EPA Administrator  
Ron Curry, EPA Region 6, Regional Administrator  
Dr. Chuck Brown, Secretary, LDEQ  
Raymond Harris, Jr., Mayor of Franklin, Louisiana  
Russel J. Cremaldi, Attorney, City of Franklin, Louisiana  
Darryl Bennett & Penny Bennett





EXHIBIT  
A







EXHIBIT  
B









EXHIBIT  
C





EXHIBIT

E





